

PATENT COOPERATION TREATY

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REC'D 31 OCT 2006

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 115091/REH	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/AU2003/000839	International Filing Date (day/month/year) 30 June 2003	Priority Date (day/month/year) 28 June 2002
International Patent Classification (IPC) or national classification and IPC Int. CL ⁷ A61N 1/05		
Applicant COCHLEAR LIMITED et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I Basis of the report
- II Priority
- III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV Lack of unity of invention
- V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI Certain documents cited
- VII Certain defects in the international application
- VIII Certain observations on the international application

Date of submission of the demand 14 August 2003	Date of completion of the report 26 October 2004
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: poi@ipaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer  JOSEPH ARROUK Telephone No. (02) 6283 2219

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International application No.

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I. Basis of the report

1. With regard to the elements of the international application:^{*}
- the international application as originally filed.
 - the description, pages 1 - 32, as originally filed,
pages , filed with the demand,
pages , received on with the letter of
 - the claims, pages , as originally filed,
pages 33 - 38, as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages , received on with the letter of
 - the drawings, pages 1/3 - 3/3, as originally filed,
pages , filed with the demand,
pages , received on with the letter of
 - the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of
2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
These elements were available or furnished to this Authority in the following language which is:
- the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
 - the language of publication of the international application (under Rule 48.3(b)).
 - the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).
3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- contained in the international application in written form.
 - filed together with the international application in computer readable form.
 - furnished subsequently to this Authority in written form.
 - furnished subsequently to this Authority in computer readable form.
 - The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
 - The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished
4. The amendments have resulted in the cancellation of:
- the description, pages
 - the claims, Nos.
 - the drawings, sheets/fig.
5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).^{**}

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

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III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be nonobvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,
 claims Nos. 26

because:

- the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

- the claims, or said claims Nos. 26 are so inadequately supported by the description that no meaningful opinion could be formed. See Box VIII, item 3.
 no international search report has been established for said claim Nos.

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

- the written form has not been furnished or does not comply with the standard.
 the computer readable form has not been furnished or does not comply with the standard.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1 - 25, 27 - 37	YES
	Claims	NO
Inventive step (IS)	Claims 1 - 25, 27 - 37	YES
	Claims	NO
Industrial applicability (IA)	Claims 1 - 25, 27 - 37	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

Reference is made to the following document cited in the corresponding ISR:

(a) WO 2003/035168 A1 (COCHLEAR LIMITED), 1 May 2003

NOVELTY (N):

Claims 1 - 25, 27 - 37

The invention defined in claims 1 - 25, 27 - 37 of the present application primarily defines an implantable tissue stimulating device comprising an elongated carrier member having at least a first lumen and further including one or more optic fibres positioned along a length of the first lumen.

Citation (a) discloses an electrode array having a plurality of electrodes mounted thereon in a longitudinal array. The elongated member has a stiffening element extending at least partially therethrough. The stiffening element can extend through a lumen formed in the elongated member and the lead. The lumen preferably extends axially through the elongated member and the lead.

The features defined in claims 1 - 16, 20 - 25, 27 - 37 are not found in citation (a). See however the indication contained in box VI "Certain documents cited" with regard to claims 17 and 18.

INVENTIVE STEP (IS):

As above.

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VI. Certain documents cited			
1. Certain published documents (Rule 70.10)			
Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
P, X WO 2003/035168 A1	1 May 2003	25 October 2002	26 October 2001
The above-listed prior art document discloses all the features defined in claims 17 and 18 of the present application.			
See: Abstract; Page 5, line 18 - page 6, line 30; Page 7, line 22 - page 10, line 8.			
2. Non-written disclosures (Rule 70.9)			
Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)	

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VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. Claim 12 is not clear because I cannot find an antecedent to the following features: "*The implantable tissue stimulating device*", page 34, line 17; and "*the one or more optic fibres*", page 34, line 17.
Furthermore, the invention defined in claim 12 is not fairly based on what is described in the specification. Claim 12 does not define the invention described because it omits all the essential features. Claim 12 only defines non-essential features which, are described in the preferred embodiments.

It appears that claim 12 was intended to be dependent on previous claim.

2. The invention defined in claim 17 is not fairly based on what is described in the specification. Claim 17 does not define the invention described because it omits the feature of the elongated carrier including "*one or more optic fibres positioned along a length of said at least a first lumen*", which from page 5, lines 5 - 6, page 6, line 18, and page 6, line 36, appears to be essential to the invention.
3. The invention defined in claim 26 is not fairly based on what is defined in the specification. Claim 26 does not define the invention described because it omits almost all the essential features of the invention.

Due to the extreme degree of lack of fair basis I cannot understand the scope of the monopoly being claimed because the definition of the invention is so broad in scope. Therefore, I cannot form an opinion with regard to novelty and inventive step (see Box III).